

REMARKS

Reconsideration of this patent application is respectfully requested in view of the foregoing amendments, and the following remarks.

The amendments to this patent application are to cancel claims 29 to 47 and 52 to 57, without prejudice. It is noted that nonelected claims 16 to 28 have been withdrawn from further consideration as being drawn to a nonelected invention.

The Examiner has rejected claims 29-60 under 35 U.S.C. §112 for failing to comply with the written description requirement. Several phrases from various claims were identified as lacking support in the present application. Thus, claims 29-47 and claims 52-57 have been cancelled from the application without prejudice. The rejection of claims 29-47 and claims 52-57 has now been rendered moot. It is respectfully submitted that the remaining claims are adequately supported by the disclosure and drawings of the present patent application. Support for the nature and scope of claims 48-51 and claims 58-60 is set out in detail below.

With respect to claim 48, the Examiner states the following features are not disclosed in the present application:

- providing a pair of finger assemblies and moving the assembly up, over and down over the top edges of the bag;
- grasping the opposed top edges of the bag with a pair of grabber arms; and,
- pulling the grasped edges of the bag apart.

The Examiner's attention is respectfully directed to page 12, lines 7-28, which describes the carriage assembly, including the gripper assembly, moving laterally, longitudinally and vertically. Further, page 13, lines 26-30, specifically states that the bag gripper assembly advances laterally towards the hopper, subsequently downwardly and then upwardly. Thus, the subject matter of claim 48 is clearly found supported by the disclosure of the present invention. The teachings related to grasping the opposed top edges of the bag with a pair of grabber arms is combined with the teachings relating to pulling the grasped edges of the bag apart.

The Examiner is respectfully directed to page 11, lines 14-31, page 14, lines 1-3 and Figures 7(g) to 7(i) which clearly

provide for the arms grasping the upper portion of the bags and pulling the grasped top edges of the bag apart to draw the mouth of the bag taut. It is to be submitted that clearly these features are found in the disclosure and claim 48 is supported by the present patent application. Thus, claim 48 is not being cancelled.

It is the Examiner's position that there is allegedly no disclosure in the present application for the subject matter of claim 49, namely the feature of moving the finger assemblies away from each other to close the opening of the bag. However, the attention of the Examiner is respectfully directed to page 14, lines 1-3, and Figures 7(a)-7(i) which specifically teach that the outer fingers of the arms diverge to grip the bag with the inner fingers and in doing so the bag is closed taut. It is submitted that the subject matter of claim 49 is supported in the disclosure of the present patent application and thus, claim 49 is not being cancelled.

Both claims 50 and 60 were identified by the Examiner as including nonsupported subject matter. More specifically, the Examiner alleges the feature of moving the bag toward the sealing apparatus while the finger assemblies are moving away from each

other is not taught by the present patent application. Page 14, lines 1-12, and Figures (7a)-7(i) teach the fingers of the grippers diverging to draw the mouth of the bag taut as the bag is being transferred to the conveyor station and subsequently to the heat sealing station. It is submitted that claim 50 and claim 60 are properly supported in the present patent application. Hence, these claims 50 and 60 are not being cancelled.

The Examiner has also alleged that claim 51 includes subject matter not taught in the present patent application, namely pulling the grasped edges of the bag apart while delivering the bag to a sealing apparatus. The Examiner's attention is respectfully directed to page 14, lines 1 to 14 which clearly teach pulling the upper edges of the bag apart to close the bag while the bag is being delivered to the conveyor station and the sealing station. This feature is also found supported in Figures 7(g)-7(i). Thus, it is submitted that claim 51 is indeed supported in the present patent application, and is not being cancelled.

With respect to claim 58, the Examiner has deemed this claim to be directed to grasping of the opposed top edges of the bag

with a pair of finger assemblies that move inwardly and down to grasp the top edges of the bag which is allegedly absent from the present patent application. It is respectfully pointed out to the Examiner that page 13, lines 26-30 describes the bag gripper assembly advancing laterally towards the hopper and subsequently downwardly. Also please see page 14, lines 1-3, which describes the inner arms of the gripper diverging and gripping opposing corners of the bag between the respective inner and outer fingers.

For all these reasons, it is firmly believed that all the claims are now in complete compliance with all the requirements of 35 U.S.C. §112. Withdrawal of this ground of rejection is respectfully requested.

One other point to be clarified relates to the Examiner's comments on page 5, lines 3-5 of the Office Action. The Examiner states in the Office Action that claims 29-60 are exact copies of claims 1-32 of the US 6,550,226, *Gates et al* patent and that the claims of the present case are clearly anticipated by *Gates* which has an effective filing date of October 27, 1999 and a publication date of April 22, 2003. It is respectfully pointed out to the Examiner that the present application is a divisional.

application and that, as set out on page 1 of the Specification, this application claims priority under U.S.C. §120 of PCT/CA00/00114 filed February 7, 2000 and also under U.S.C. §119 of Canadian patent application No. 2,262,276 filed on February 15, 1999. Thus, the present application clearly cannot be anticipated by the U.S. 6,550,226, *Gates et al* patent, because February 15, 1999 is earlier than October 27, 1999 of *Gates*.

Thus, the present invention is not anticipated under 35 U.S.C. §102. Withdrawal of this ground of rejection is respectfully requested.

With respect to the Examiner's rejection to claims 29-60 under 35 U.S.C. §102, claims 29-47 and 52-57 have been cancelled from the present application rendering the rejection of these claims moot. Applicant submits that claims 48-51 and 58-60 are clearly supported in the original disclosure of the parent U.S. Patent Application Serial No. 09/890,083 and that the Declaration of an Interference proceeding is proper and respectfully

requested.


Respectfully submitted,
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I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 25, 2004.


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